

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE WESTERN DISTRICT OF ARKANSAS

3 CRAIG SHIPP,

4
5 Plaintiff,

6 vs.

No. 4:18-CV-04017-SOH

7 CORRECT CARE SOLUTIONS, LLC;
8 DR. LORENE LOMAX; DR. MIMO
9 LEMDJA, et al.

10 Defendants.

11 DEPOSITION OF SHAWN SMITH, M.D.
12 TAKEN ON BEHALF OF THE DEFENDANTS
13 ON JUNE 13, 2019 AT 1:30 P.M.
14 IN OKLAHOMA CITY, OKLAHOMA

15 APPEARANCES

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(Appearances continued on the following page)

REPORTED BY: Abby Rhodes, CSR, RPR

<p style="text-align: right;">Page 22</p> <p>1 recognized that by around week three or so he did 2 get -- 3 Q Okay. 4 A -- some form of orthotic. 5 Q Right. 6 A It was just a little confusing because down 7 in other records when he was at the other medical unit 8 it said he hadn't gotten them yet, so... 9 Q Okay. All right. 10 If you skip down a few sentences, you state 11 "The pressure ulcers on the right foot that developed 12 due to lack of appropriate support and protection with 13 prescription orthotics and shoe wear never healed and 14 was the proximate cause for his subsequent 15 below-the-knee amputation on July 31, 2017." 16 Is that correct? 17 A Yes. 18 Q Okay. 19 A That's what it says. 20 Q Do you consider other outside factors that 21 may have contributed to his ulcer not healing when you 22 made that opinion? 23 A Do you mean were there other things that 24 affected his inability to heal? 25 Q Yes, sir.</p>	<p style="text-align: right;">Page 24</p> <p>1 offload his foot completely." That's March 10. 2 A So is there something in here saying he 3 didn't do that? 4 Q Yes, sir. Oh, man. I think this is when 5 the photo copier had a problem. 6 A Okay. I'm confused. What's the question 7 about this? 8 Q I wanted to know if you read the numerous 9 references by nursing staff that the resident was 10 walking into the infirmary without his wheelchair from 11 the 11th, the 12th, the 13th, the 14th, the 15th, the 12 16th, March 22. 13 A Does that say that on here? Because I'm... 14 Q No, sir, that's the first record. 15 A Yeah, well, that's what why I was asking 16 what you were having me look at this for. 17 Q That he was instructed to stay in the 18 wheelchair. 19 A I did see this, this specific page where it 20 said "wheelchair for now to offload his foot 21 completely," yes, I did see that. 22 Q And we may have to go off the record. I 23 gave Staples things to photocopy and I'm missing 24 several pages. Okay. Well, here's one. 25 A Okay. I do see the document in here that he</p>
<p style="text-align: right;">Page 23</p> <p>1 A Yes. 2 Q Okay. Can you tell me what those are. 3 A Diabetes, charcot foot, and just the 4 severity of the wound as it developed. 5 Q Okay. Now, that's a year and a half of 6 time. 7 Do you know how the patient handled his foot 8 care or his diabetic condition during that year and a 9 half? 10 A Well, I know what was documented in the 11 records I reviewed, but I couldn't tell you what he 12 did every day about it. 13 Q Okay. Do you recall reviewing records where 14 he was repeatedly not using the wheelchair that he had 15 been told to use? 16 MR. FRANSEEN: Object to form. 17 THE WITNESS: Do you mean the records that 18 Dr. Peeples was alluding to in his report? 19 Q (By Ms. Odum) The -- yeah, the -- 20 A Because I saw several documents like that. 21 I looked through thousands of pages trying to find 22 those specific instances and I couldn't find those in 23 there, so... 24 Q Okay. Let's see. I'm going to hand you 25 Peeples 102. The plan is "wheelchair for now to</p>	<p style="text-align: right;">Page 25</p> <p>1 walked in medical without a wheelchair, yes. 2 Q Okay. 3 A That's on -- 4 Q And I'm just going to hand you a few -- 5 A That's on March 16. 6 Q Yes, sir. 7 A And this is the same day, it documents the 8 same thing. And then this is, let's see, a week later 9 and this documents that he picked up bags and put it 10 in his wheelchair and pushed the wheelchair. So I did 11 see references from Dr. Peeples about that, but I 12 didn't see that exact report. 13 Q Okay. And there are several others. 14 MR. FRANSEEN: Object to the form. 15 Q (By Ms. Odum) We can go off the record for 16 me to get the notebook if you'd like to review them. 17 A Well, if they're the same references that 18 Dr. Peeples made, I mean, I don't doubt that he has 19 gotten through there and found those. 20 Q Okay. So if a -- if a patient that was 21 recently diagnosed with diabetic foot ulcers is not 22 following instructions to be non-weightbearing, does 23 that have any bearing on whether the ulcer heals? 24 A Well, I think if a patient has the 25 opportunity to offload and not weightbear and have</p>

1 full control of their abilities and they didn't do it,
 2 that would definitely have an affect on healing.
 3 **Q Okay.**
 4 A Last time I checked, you know, most people
 5 who were incarcerated aren't in there because they
 6 follow the rules or because they follow through with
 7 what they're supposed to do, so, and, you know, my
 8 understanding of the people I saw during training
 9 from -- from prisons is usually that there's specific
 10 rules they have to follow that are outside of what you
 11 and I would consider the independent things we can do
 12 daily.

13 **Q Okay. But if he had access to a wheelchair**
 14 **and was told to remain weightbearing or**
 15 **non-weightbearing, would you expect the patient to**
 16 **follow that rule, that instruction?**

17 A I'd expect him to follow it most of the
 18 time, but I wouldn't expect him to do it all the time.

19 **Q Okay. What about if it's a fresh ulcer like**
 20 **in this case?**

21 A Well, I mean, you can walk without putting
 22 weight on that ulcer as well, and I don't know by that
 23 documentation what he was actually doing other than
 24 pushing a wheelchair, so I don't know how he was
 25 protecting his foot.

1 **Q Okay. So if he did not have his shoe from**
 2 **the 1st to the 19th of February, he could have walked**
 3 **in a manner where he wouldn't have put pressure on**
 4 **his -- on his charcot foot, on the deformity?**

5 A No.

6 **Q Okay.**

7 A That's not what I'm saying.

8 **Q Okay.**

9 A I'm saying if he knew he had a hole in his
 10 foot, he could hold onto the wheelchair and offload.

11 **Q Okay.**

12 A Without putting weight on it.

13 **Q Okay. But he was instructed to sit in his**
 14 **wheelchair?**

15 A He was instructed to use a wheelchair to
 16 offload. I don't know if they told him, You've got to
 17 sit in that wheelchair 24 hours a day and don't get
 18 out of it.

19 **Q Okay. To offload his foot completely?**

20 A That's what it said, yes.

21 **Q Okay. And I'm going to hand you a document**
 22 **CRCA00054 that was produced by the plaintiff. If**
 23 **you'll look at that last paragraph, that was a letter**
 24 **provided by plaintiff that he wrote to his sister**
 25 **Barb.**

1 A Okay.
 2 **Q Does that seem to -- what is your opinion of**
 3 **his comment about his -- would you agree that he's**
 4 **upset because they're documenting he will not use a**
 5 **wheelchair?**

6 A Well, it looks like he's upset because
 7 somebody is watching him, his every move about whether
 8 he's in the wheelchair and that he doesn't have
 9 crutches, which he'd prefer. But, I mean, I haven't
 10 seen any documentation for them logging on all the
 11 time, but I would be curious to see that if they were.

12 **Q Okay. Well, we'll take a break shortly and**
 13 **I'll go get that notebook. I thought all the**
 14 **photocopies were here.**

15 A Okay. I mean, if there's a half a dozen,
 16 that's one thing, but if there's four or five a day,
 17 that's another.

18 **Q Okay. Well, if it's twice a day for several**
 19 **days in a row?**

20 A It wouldn't matter. Wouldn't change my
 21 opinion.

22 **Q It doesn't change your opinion?**

23 A No.

24 **Q Okay.**

25 A We're dealing with human beings here.

1 **Q Okay. So the patient doesn't have**
 2 **responsibility to try to assist in his care?**

3 A Oh, he does without a doubt.

4 **Q Okay. Now, if he is -- should he be**
 5 **purchasing junk food on commissary if he's trying to**
 6 **have a diabetic ulcer heal?**

7 A Well, I don't know what his blood sugars
 8 were during that time period.

9 **Q Okay.**

10 A If his blood sugars were what they -- what I
 11 saw during the documented follow-up visits, they were
 12 running between, anywhere from 100 to 180. So if his
 13 sugars were generally 100 so 180, then I wouldn't have
 14 a problem with him eating those types of food from the
 15 commissary.

16 **Q Okay. Yeah, we're going to have to take a**
 17 **break in a minute because -- did you read the column**
 18 **and carry note when they removed his cast in March of**
 19 **2016 after he was walking around on the foot and had**
 20 **to have his cast removed?**

21 A Are you talking about where the cast was
 22 rubbing on his toe?

23 **Q Yes.**

24 A I did read about the cast rubbing on his
 25 toe.

1 that blood alcohol reading?

2 A I've seen one or two but not very many.

3 Q Okay. Does this demonstrate any form of
4 personal responsibility on Mr. Shipp's part, his
5 criminal history with DWI?

6 A With regards to his care in the prison or
7 just in general?

8 Q Just his demonstration of personal
9 responsibility.

10 A It tells me he drinks -- drinks too much.

11 Q Okay. Now, if a person has diabetes, should
12 they be drinking like that?

13 A In general, it's not healthy to drink like
14 that and be a diabetic.

15 Q Okay. If he testified that before his
16 incarceration at the time he got this he was drinking
17 a fifth of vodka a day, is that good for his diabetic
18 condition?

19 A It's not good to drink that much alcohol
20 with or without diabetes.

21 Q What does it do to a diabetic?

22 A Well, it can affect their intake, it can
23 affect their blood sugars, it can cause additional
24 liver problems that will affect their ability to
25 metabolize sugars.

1 Q Does it have any negative impact on their
2 feet?

3 A Well, if you drink enough, you can get a
4 peripheral neuropathy, which can negatively affect you
5 in terms of if you have an alcoholic or peripheral
6 neuropathy.

7 Q Okay. Did Mr. Shipp tell you that his
8 family had actually gotten involved with his care
9 because of his alcoholism?

10 A No.

11 Q Did he tell you that his sister had gotten a
12 guardianship over him because of his alcoholism?

13 A No.

14 Q And if an adult requires a family member to
15 get a guardianship because they're -- and they're
16 declared incapacitated, is that a person that would be
17 personally responsible in public?

18 A Do you mean after they got -- gave up their
19 guardianship?

20 Q Yes, sir. No.

21 If an incapacitated person has a guardian,
22 what does that mean?

23 A That means that somebody gets to make
24 decisions for them with regards to whatever is
25 outlined in the guardianship.

1 Q Okay.

2 A Certainly would mean they'd need to have
3 supervision with whatever they're doing wherever
4 they're at.

5 Q Okay. And so would Mr. Shipp, if he had a
6 guardianship, would that mean he needed some
7 supervision once he was out of prison?

8 A In and out of prison, he'd need supervision.

9 Q Okay. And if he demonstrated his -- a
10 failure to follow simple orders such as staying in a
11 wheelchair while he's in prison, in your experience as
12 a doctor handling these type of patients, would he be
13 expected to be responsible and follow doctors'
14 directions when he's out of prison?

15 A I'm not sure I understand your question.
16 Can you -- can you clarify that for me?

17 Q If he's noted several times to not use a
18 wheelchair that he was told to use because of the
19 serious nature of his foot and he -- the record
20 demonstrates he did not, and his letter to his sister
21 demonstrates that he did not, would you expect that
22 person when he has no supervision to follow the rules
23 set out by the doctor?

24 A Well, it depends on what the rules are. I
25 mean, in the records that I reviewed, one of the

1 reasons he wasn't using the wheelchair is because it
2 was hurting his shoulders. I don't know if he was
3 asked to use the wheelchair at home or not or whether
4 he was offered the crutches that he had asked for when
5 he was in the prison.

6 So that's why I'm a little confused about
7 your question because I don't know which specific
8 doctor order we're talking about, something that
9 happened while he was there or something afterwards.
10 And you're talking about something afterwards, and I
11 don't really know what orders they gave him to do.

12 Q Okay. Well, Dr. Thomas wanted him to be
13 non-weightbearing and he came in a week later wearing
14 shoes.

15 A That's what she documented, yes.

16 Q Okay. And that would indicate a
17 non-compliant patient?

18 A On that day, yes.

19 Q And you have no idea how compliant he was
20 from that point.

21 A Nor do you.

22 Q Right. So we would have to speculate
23 whether he was compliant or not.

24 A Well, we'd have to use the information at
25 hand, and the information at hand shows that when he

1 was supervised, his blood sugars were under reasonable
2 control, he got better in some instances, but the size
3 of the one particular wound never healed. He healed
4 his left wound and he was compliant with coming for
5 his treatments, whether it was whittling on his feet
6 or hyperbarics or wound care.

7 So he did show some efforts in terms of
8 wanting to save his foot and being compliant with
9 treatment; it just so happens he didn't use the
10 wheelchair the day he saw the doctor.

11 **Q Well --**

12 A And you're right, I don't know what he did
13 on any other day.

14 **Q Okay. And you said while he was supervised?**

15 A Yes, I did say that.

16 **Q Okay. What about when he -- did you see
17 what his A1c level was when he was released from
18 prison?**

19 A Are you talking about in August or...

20 **Q Yes, sir, in August of 2016.**

21 A I don't recall a specific one in August. I
22 know that the -- between May and July, his sugars ran
23 between 100 and 150 which would be consistent with a
24 hemoglobin A1c right around 7 to 7.2 range, which I
25 think is the one I saw in there, but I don't know if

1 it was right when he left or not.

2 **Q Okay. I'm going to hand you Peebles 360
3 which is a record from River Valley. There's an
4 August 16, 2016 record and a February 17, 2007.**

5 A This was when he was in the medical
6 incarceration facility?

7 **Q He was released August -- in August, I think
8 August 10.**

9 A Okay. So this is like the week after?

10 **Q The week after, and then the next one is six
11 months later.**

12 A Yes.

13 **Q Do you see what his A1c levels are when he
14 was released right after he was released?**

15 A 6.8.

16 **Q Okay. And what was it six months later when
17 he's on his own?**

18 A What's recorded in here is 13, but when I
19 tried to look back in those records to correlate a
20 blood sugar, because, I mean, if your hemoglobin is
21 A1c 13, your blood sugar should be 375 or higher,
22 which means he should have been hospitalized, and I
23 looked through all those medical records during that
24 time period and there wasn't one blood sugar that
25 documented anything in that range.

1 And the only thing I saw about blood sugars
2 was his had been in the same range it had been for a
3 while, so I don't know what to make of that particular
4 number because certainly you'd want to correlate it
5 with actual blood sugars.

6 **Q Did you see any records from that time
7 period from River Valley where he said that he really
8 wasn't paying attention to his blood sugars?**

9 A During the River Valley time?

10 **Q Yes, sir.**

11 A I know he reported that before he was
12 incarcerated he wasn't, but they were checking his
13 blood sugars routinely there.

14 **Q Okay. You don't recall him saying that he
15 wasn't paying close attention to his blood sugar
16 during that time period after his release?**

17 A I don't recall that, but if you look at his
18 sugars during that time period, they did pretty good.
19 This hemoglobin A1c is something that most diabetics
20 would want.

21 **Q The 6.8 right after his incarceration?**

22 A Yeah. That was right during that time
23 period that he supposedly wasn't worried about his
24 diabetes.

25 Is that what you're asking?

1 **Q No, I'm asking about after he's released
2 from prison six months later.**

3 A Oh, okay. No, all I saw when there was
4 questions about the diabetes was he said he was eating
5 the same thing he normally does.

6 **Q Okay. So you did see that?**

7 A That one sentence, yeah.

8 **Q Okay. In the records that you have, did you
9 see where he admitted that he was not keeping up with
10 his blood sugars?**

11 A That he wasn't checking them?

12 **Q Correct.**

13 A Oh, I'm sure I saw at least two times where
14 it said that, but I couldn't tell you exactly when
15 that was.

16 **Q Okay. Well, if a person's not checking his
17 blood sugars and he's trying to heal, does that affect
18 diabetic foot ulcers?**

19 A If his sugars are good, no.

20 **Q But what if his A1c is 13 or 12.8?**

21 A Well, that's what I'm -- that's what I'm
22 saying. If his sugars -- if his hemoglobin A1c was
23 really that high then we would have seen sugars all
24 through that course of care in the 300-plus range and
25 he would have been in the hospital with that kind of

1 blood sugar.

2 **Q Okay. Well --**

3 A And I didn't see anything in there because I
4 specifically went back to look after Dr. Peeples
5 mentioned that because obviously that would affect
6 things if -- if your blood was 380 all the time, but I
7 couldn't find anything in there to correlate with that
8 number.

9 **Q Okay. Did you --**

10 A So I don't know if that's a real number or
11 not.

12 **Q Did you find one where it was 12.8?**

13 A The hemoglobin A1c --

14 **Q Yes, sir.**

15 A -- is that what you're saying?

16 **Q Yes, sir.**

17 A Yeah, but I didn't see any sugars to
18 correlate with that, and without a blood sugar to
19 correlate with that, you don't know if that's his
20 hemoglobin A1c or somebody else's.

21 **Q The record says it's his; is that correct?**

22 A The record documents that number, but they
23 don't document anything else that correlates with
24 that, so --

25 **Q Okay.**

1 A -- in my experience in documentation
2 records, if I'm going to believe that number, I'm
3 going to want to see the data that goes along with
4 that, and I just didn't see it, so I...

5 **Q Did you --**

6 A From my experience, I would say that that's
7 not necessarily his hemoglobin A1c.

8 **Q Did you see a record from January that
9 showed an A1c of 12.8?**

10 A There was one in January, yes.

11 **Q Okay. So we have January that says 12.8 and
12 we have February that says 13, so are you saying they
13 made two mistakes?**

14 A I'm just saying I don't have any blood
15 sugars to go along with that, and without a blood
16 sugar to go along with that and otherwise
17 documentation of being compliant with his wound care,
18 it's hard for me to say that that pushed him over the
19 edge one way or the other.

20 **Q So would you want more records, then, so you
21 can figure out if he was -- what his blood sugars were
22 if he was compliant?**

23 A I don't think there are any more records,
24 otherwise I would have probably seen them by now,
25 so...

1 **Q You don't think there are any more?**

2 A Do you have any records that you want to
3 show me that tells me one way or the other about that?

4 **Q Well, I was curious if you've asked for any
5 other records because, you know, you're giving your
6 opinions, so I just want to know if that rang a bell
7 for you that maybe you needed to verify that there
8 weren't any more others --**

9 A I looked through all the records I had to
10 try to verify that number as being accurate, and I
11 don't have anything in the records to support that,
12 so --

13 **Q Okay.**

14 A -- right now I don't have any data to
15 support those numbers.

16 **Q Okay. And you don't have any evidence that
17 they're wrong?**

18 A I do not.

19 **Q Okay. If that is, in fact, correct, is
20 that -- would that reflect a compliant patient?**

21 A With regards to diabetes? No.

22 **Q Yes, sir.**

23 **And if you have a diabetic that his blood
24 sugars jump that drastically from 6.8 to 12.8 and 13,
25 is that -- would that negatively affect a diabetic**

1 **foot ulcer?**

2 A Well, normally, if a patient would go from
3 normal hemoglobin A1c to that high, we would have seen
4 major changes in his weight, we would have seen major
5 changes in other lab work, and none of that was
6 documented in the records I reviewed, so I would
7 expect to see several things change.

8 His weight stayed right around the same
9 weight. His other blood work stayed right around the
10 same level, so I --

11 **Q What about his --**

12 A -- would expect other things other than just
13 a hemoglobin A1c.

14 **Q What about his kidney function, would that
15 change?**

16 A If his blood sugar was nearly 400 every day,
17 then, yeah, he'd have been in kidney failure by now.

18 **Q Do you recall them being concerned about his
19 kidney function in June of 2017?**

20 A Yes, because the Metformin he was taking, so
21 they stopped it and switched him.

22 **Q Okay. But could that also have been because
23 of his blood sugar going too high for a bit?**

24 A Not for a bit.

25 **Q For a few months.**

1 yes.

2 **Q Okay. During your review of the records,**
3 **other than what I've asked you about, did you see any**
4 **other moments of noncompliance that was demonstrated**
5 **by Mr. Shipp?**

6 A I mean, I looked at the records. I saw
7 reports that you pointed out that Dr. Peeples pointed
8 out. I saw also, you know, reports that they said he
9 was taking care of himself and doing well on some
10 pages too, so I -- I can't recall of anything specific
11 that said he was grossly not taking care of himself
12 after that time period.

13 **Q Okay. Would you consider a patient's**
14 **noncompliance to contribute to a non-healing ulcer?**

15 A Depending on what the noncompliance was,
16 it's certainly possible, yes.

17 **Q Okay. Now, in your report, you -- the next**
18 **sentence, as I read one earlier, the last sentence of**
19 **that first paragraph on page two, "Had Mr. Shipp been**
20 **provided use of his prescription shoes, it is my**
21 **opinion that he would not have developed blisters that**
22 **ultimately led to the loss of his right leg to**
23 **amputation."**

24 **Now, how can you say that?**

25 A Well, because he came into the facility

1 without them when he used his -- his orthopedic
2 orthotics and shoes, and when he didn't have them was
3 put in Crocs that are known to rub your feet and had
4 abnormalities that he was a -- set up to get
5 broken-down feet.

6 **Q I guess my question is: How do you know**
7 **nothing else would have happened in that year and a**
8 **half?**

9 A I don't know what would happen. I'm just
10 looking at, you know, a guy that you're saying is
11 non-compliant, doesn't care about his diabetes, but he
12 asked to wear his orthotics and protect his feet and
13 doesn't get them for three weeks and then has a hole
14 and you wonder why he's mad about it.

15 So, I mean, that's what I'm saying in that
16 sentence is that if he had been given those orthotics,
17 then he wouldn't have gotten that sore that led to
18 that year and a half of care before he had his leg cut
19 off.

20 **Q Okay. Well, it said he would have not**
21 **developed blisters.**

22 **I mean, he could have developed blisters**
23 **anytime in that next year and a half; is that correct?**

24 A I was talking about that time where he was
25 incarcerated and had no control of his situation. If

1 you're asking me if a guy can get a blister anytime
2 when he's a diabetic, sure. But we're talking about
3 this time where he had no control of his situation.
4 He was in a prison, he had to follow the rules and do
5 what they said and had no independent control of
6 protecting his feet other than staying off of them.

7 **Q Do you know why he didn't get his shoes?**

8 A I know that he was supposed to request it
9 and then it -- there was a delay. That's all I know.

10 **Q Okay.**

11 A You-guys would probably know a lot more
12 about that than I would.

13 **Q Okay. I was just curious.**

14 **But anything could have happened in that**
15 **next year and a half where he might have ended up**
16 **getting an amputation?**

17 MR. FRANSEEN: Object to form.

18 **Q (By Ms. Odum) Is that correct?**

19 A Anything can happen any day of the week.

20 **Q Right.**

21 A So to answer that question, I think anything
22 can happen any day, any time, any place.

23 **Q Okay. Do you want me to -- you read**
24 **Dr. Peeples' assessment of the missing wheelchair**
25 **records that I think I still have tabbed.**

1 **Do you want to review those records?**

2 A It depends on what --

3 **Q Or is that --**

4 A It depends on what question you're going to
5 ask me.

6 **Q Well, the only question --**

7 A If you're asking me to review them to answer
8 the previous questions, I don't need to look at them.

9 **Q Okay. That's all. Just to ask the same**
10 **questions, would that demonstrate noncompliance.**

11 A It demonstrate -- it demonstrates
12 documentation of noncompliance in those instances.

13 **Q Okay. Did Mr. Shipp's conduct contribute to**
14 **his ulcer not healing?**

15 A At what time?

16 **Q When he wasn't using his wheelchair, after**
17 **he was released from prison and we know at least once**
18 **he didn't do what Dr. Thomas asked him to do.**

19 A Well, I kind of think the, you know, the
20 horse was already out of the barn. I mean, once you
21 get the sores in that area in an area that's already,
22 you know, at risk of having breakdown just because of
23 the deformities, I don't think there was whole lot he
24 could do to make it work because all those doctors
25 worked really hard afterwards to get all the different

1 things in place that would normally heal an ulcer like
 2 that, so I don't think if he would have laid in bed
 3 for a year and a half completely non- -- complete
 4 non-weightbearing on that leg it would have made a
 5 difference in this case.

6 **Q Okay. So --**

7 A I don't think anything he did on those
 8 instances that are documented was the major cause for
 9 him to have an amputation. Could it have contributed?
 10 It's possible, but not likely given everything that
 11 they did to try to save his foot.

12 **Q Okay. But again -- and we know what**
 13 **happened while he was in prison, but do you agree that**
 14 **we don't know what happened when -- after he was**
 15 **released from prison with regard to his personal**
 16 **conduct?**

17 A I don't know what anybody does every day.

18 **Q Okay.**

19 A I just -- I just have what's documented
 20 right there to look at.

21 **Q All right. The diabetics that fall under**
 22 **your care in your job, do you ever see any that have a**
 23 **severely deformed charcot foot?**

24 A Yes.

25 **Q How is their function as far as walking,**

1 **activities of daily life?**

2 A It depends. If their foot is intact and
 3 they're not treating any kind of ulcer or something,
 4 then, you know, there's definitely going to be
 5 mechanical changes in the way they walk or get up and
 6 down, but most of them function just fine, hold jobs.

7 **Q How many patients with charcot foot where**
 8 **the bone is actually protruding from the mid foot, how**
 9 **many of those patients in your experience end up with**
 10 **ulcers?**

11 A Well, I don't know. I mean, just looking at
 12 some of the literature, you know, 20, 30 percent
 13 can -- can end up doing that if they -- if they're
 14 patients that actually have an ulcer and a charcot
 15 foot, they're more -- they're like 12 times more
 16 likely to get an amputation than somebody who just has
 17 a charcot foot.

18 **Q Okay. Now, if he had already had a**
 19 **significant ulcer that lasted months, is there an**
 20 **increased risk of recurrence for that even with trying**
 21 **to follow the rules?**

22 A Do you mean in the same spot that...

23 **Q Yeah, in the area of the charcot joint.**

24 **If he's already -- if Mr. Shipp, he had**
 25 **already had that ulcer in 2013 that he was treated for**

1 **months, is there -- have you read any literature where**
 2 **that there's a tendency for an ulcer to come back in**
 3 **the same location?**

4 A Well, certainly if there's a bony prominence
 5 there that affects weightbearing and gait, then, yeah,
 6 there's going to be a higher instance of that, yes.

7 **Q Okay.**

8 A That's why you've got to protect it.

9 **Q Did he tell you that -- I can't remember the**
 10 **word he used, that it was like a third of a tennis**
 11 **ball coming out from the bottom of his foot?**

12 A Well, just by looking at the x-rays, it
 13 sounded like it was pretty prominent.

14 **Q Okay. I can't remember if he said**
 15 **"pirouette" or something that begins with a P. He**
 16 **could spin on it?**

17 A Well, when they describe the rocker bottom,
 18 that means it's pretty prominent because that means
 19 that lower portion of that mid foot is protruding
 20 lower than it normally would, so that would definitely
 21 be a concern.

22 **Q Okay.**

23 A Be a reason to wear your orthotics, anyway.

24 **Q And you don't remember the biopsy to be one**
 25 **of the causes for him to decide to get an amputation?**

1 A Well, I don't recall asking specifically
 2 what his reason was. I just -- when looking at the
 3 notes, that it basically said they talked to him, I
 4 think it was around June or -- I want to say March or
 5 April, and they basically said if this isn't better
 6 within a year, which would have been around June, then
 7 he would be willing to consider amputation because it
 8 was taking so long.

9 **Q Okay.**

10 A So I didn't ask him specifically about that.
 11 I mean, certainly if you have an open hole from an
 12 ulcer and you develop cellulitis and you're frustrated
 13 with having an open wound, that would pretty much lean
 14 you towards that direction.

15 MS. ODUM: All right. I think that's all I
 16 have.

17 MR. FRANSEEN: Mr. Strange, do you have
 18 anything?

19 MR. STRANGE: I don't have any questions.

20 CROSS EXAMINATION

21 BY MR. FRANSEEN:

22 **Q I guess the only couple questions I have**
 23 **are, you know, were you shown any records that, you**
 24 **know, in the months prior to his incarceration that**
 25 **Mr. Shipp couldn't walk on his charcot deformity?**